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No. 868

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

GERALD TAYLOR, and CLIFTON A. HAMMOND,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR FOURTH CIRCUIT

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To the Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States

The petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered January 10, 1964, affirming the judgment of conviction that was entered by the United States District Court for the District of Maryland against the petitioners for violations of the Internal Revenue Code (26 U.S.C., Sections 4401, 4411, 4412, 4901, 7203, 7262 and 7272); violations of the Code of Federal Regulations (Title 26, Section 325.50).

OPINIONS BELOW

There was no opinion in the United States District Court for the District of Maryland.

The opinion of the United States Court of Appeals rendered January 10, 1964 is not yet reported but is contained in the Appendix hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code and Rule 37(c) of the Federal Rules of Criminal Procedure.

The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was dated and entered January 10, 1964.

On February 10, 1964, this Court granted an extension of time within which to file a petition for Writ of Certiorari to and including February 25, 1964.

QUESTION PRESENTED

In a case where federal agents execute a search warrant for violation of wagering tax laws for suspected lottery activity and seize a quantity of lottery equipment and also non-contraband from the person of the petitioners in the raid and the petitioners file a pre-trial motion "to suppress evidence and for the return of property", is it not a denial of due process of law for the Court (both trial and appellate) to determine that since the motion seeks the return of property that this constitutes an admission that the contraband belongs to them and that they thus have a proprietary interest in the lottery, and are consequently guilty of the charged offenses, when the motions do not claim ownership of the gambling articles and when a fair reading of the motion clearly shows that they want the return of their personal property?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Fifth Amendment:

"No person shall be . . . deprived of life, liberty, or property without due process of law. . . ."

STATEMENT OF THE CASE

The instant cause came on for trial by the Court, sitting without a jury in the United States District Court for the District of Maryland on May 7, 1962. The petitioners, Gerald J. Taylor and Clifton A. Hammond, (and two others who are not before this Court) were charged with violations of Title 26 U.S.C. Sections 4401, 4411, 4412, 7203, 7262 and 7272; violations of the Code of Federal Regulations, Title 26, Section 325.50 (receiving wagers without having paid the special occupational tax, failure to register, and failure to supply required information); and violations of Title 18, USC, Section 2 (aiding and abetting).

The evidence adduced at trial established that the petitioners had been seen on many occasions during a nine day period by special Agents Arnold G. Bedingfield and William H. Jewell, to arrive in Arundel County. They took from the cars, boxes, parcels, and containers and then entered the premises. The agents concluded that the petitioners were involved in the operation of a numbers game.

A search warrant was issued on July 17, 1959 for the premises upon the basis of an affidavit made by Agents Bedingfield and Jewell. The petitioners were arrested on July 17, 1959, at the time of the execution of the search warrant.

Agent Bedingfield, called as a witness for the government, testified that in the premises, he observed the pe-

titioner Taylor removing money from envelope on a table in front of him and "stuffing" the money into his pockets.

Agent Haspert, a government witness, testified that when questioned the petitioners stated that they were familiar with the requirements of a Federal Gambling Stamp.

The officer seized numerous paper writings, slips, notations, telephone equipment, furnishings, money and two automobiles as gambling paraphernalia. In addition, they seized among other things $1,088.00 plus $184.00 from the pockets of the petitioner Taylor; $86.16 from the pockets of the petitioner Hammond.

Upon cross-examination, Agent Bedingfield testified that he had never seen any of the petitioners accept a numbers bet.

It was established that several months after their arrests, the petitioners filed a motion to suppress for use as evidence all of the articles and objects that were seized at the time of their arrests. In the motions the petitioners asked for the return of certain monies which had been seized from their person. The motion was denied on April 11, 1960. The transcript of the proceedings of the hearing on the motion was introduced into evidence and marked as the government's exhibit number one. At the close of the government's case the petitioners made a motion for a judgment of acquittal, the Court denied the motion. At the conclusion of the trial the petitioners renewed their motions for judgment of acquittal, as well as all prior motions made.

The cause came on for verdict and sentencing on November 2, 1962. The petitioners were found guilty on all counts; and sentence was imposed. An appeal to the United States Court of Appeals for the Fourth Circuit followed. By judgment dated January 10, 1964, the Court affirmed the District Court judgment.

REASONS FOR ALLOWANCE OF THE WRIT

It has been well established in our system of jurisprudence that in a criminal case the prosecution must always prove the criminal charge beyond a reasonable doubt. The petitioners contend that in the instant case the government failed to meet its burden of proof and that the conviction herein is not supported by the evidence. Thus, the petitioners urge that this Court grant a petition for a Writ of Certiorari to the Court of Appeals for the Fourth Circuit on the ground that the conviction contravenes the well-ordered administration of justice so as to call for the exercise of this Court's supervisory powers.

The issue before the Trial Court was whether the petitioners had such a proprietary interest in the lottery operation as to justify a finding that they were "bankers",[1] and hence liable for the wagering tax.

The Trial Court determined that the allegations contained in the pre-trial motion made by the petitioners and titled "Motion to Suppress Evidence and To Return Property" supported a finding that the petitioners had such a proprietary interest in the lottery operation. In that motion the petitioners moved the Court 1) to suppress for use as evidence all articles and objects seized at the time of the arrest, and (2) for the return of certain monies which had been seized from their persons, as well as the return of the car which belonged to the petitioner Hammond. It must be noted that none of the items seized from the persons of the petitioners, and claimed as their own, was necessary to the conduct of the lottery operation, or even in the nature of "numbers" paraphernalia. Hence, it would have been of little benefit to the petitioners to have these items suppressed as evidence.

---

[1] The case of United States v. Calamaro, 354 U.S. 351 (1951) determined that the obligation to purchase the special occupational tax stamps applies to the banker in a numbers or lottery business.

On the other hand, the property listed separately in the paragraph numbered one was part of the numbers operation. At no point in the motion do the petitioners assert that these articles belong to them, nor do they claim any right to their possession, custody or control. At best it can only be said that the wording of the motion is vague and ambiguous, and does not permit any inference as to who owned the property listed therein.

Surely, if the allegations within the motion are to be deemed as admissions against the petitioners' interest, the admissions should be clear and unequivocal so as to admit of one—and only one—inference.

Any doubts caused by the wording of the Motion should be resolved in favor of the petitioners. In 1894, this Court stated in a Note titled *Presumption of Innocence and Legality; Qualifications of the Rule:*

> "One of the most important legal presumptions is that of innocence. This presumption, which in legal praseology, 'gives the benefit of a doubt to the accused', is so cogent, that it cannot be repelled by any evidence short of what is sufficient to establish the fact of criminality with moral certainty."

Plainly, then, a reading of the motion does not disclose that the petitioners have a proprietary interest in the lottery operation.

Thus, there is no evidence of any proprietary interest which would make the petitioners liable for the wagering tax.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8822.

United States of America,
Appellee,

versus

Gerald J. Taylor, Clifton A. Hammond, and John W. Butler, Jr.,
Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE.
R. DORSEY WATKINS, DISTRICT JUDGE.

(Argued September 25, 1963. Decided January 10, 1964.)

Before HAYNSWORTH, BOREMAN and J. SPENCER BELL, Circuit Judges.

George L. Russell, Jr., (John A. Shorter, Jr., on brief) for Appellants, and J. Edward Davis, Assistant United States Attorney, (Joseph D. Tydings, United States Attorney, on brief) for Appellee.

HAYNSWORTH, Circuit Judge:

These three codefendants appeal from their conviction of offenses under the Internal Revenue Code relating to

gambling. They question the sufficiency of the evidence and challenge the evidentiary use of their admissions in their pretrial motions to suppress evidence. We find no error in either respect.

Revenue agents received information from a source which they had found reliable on previous occasions that Hammond, Taylor and others were operating a lottery out of a house which appeared to be a summer dwelling. They set up a surveillance of the house and on a number of days in succession saw Hammond and Taylor arrive in separate automobiles at the house in the late afternoon and depart sometime thereafter. On each occasion they moved to and from their automobiles bags and packages which appeared to the agents to contain gambling paraphernalia. Hammond was the owner of the automobile he drove, while that in which Taylor came to and fro was registered in the name of the other appellant, Butler.

On the basis of the original information they had received and their own observations, the agents obtained a search warrant which was executed on July 17, 1959. They knocked upon the door and announced their presence. When there was no response, they broke into the house, where, in a front room, they observed Taylor and Butler busily engaged in removing currency from envelopes and stuffing the money in their pockets. The house was not furnished as a residence, but there were telephones, tables and chairs, four adding machines, coin wrappers and records of lottery operations on earlier days. There were a great many lottery slips, some of which bore Butler's initials. Taylor's pockets were found to contain well over $1,000, while smaller sums were found in the pockets of Butler and Hammond. In Butler's pockets, the agents also found adding machine tapes, pieces of paper with codes and notations, and other gambling paraphernalia.

The agents seized all of the gambling paraphernalia, including the two automobiles.

Before trial, Taylor and Hammond jointly filed a motion to suppress evidence of the articles seized and to return to them "their property." In a following paragraph, they described all of the articles seized in the house except those removed immediately from the persons of the defendants, and, in that paragraph, they referred to themselves as the occupants of the house. In a subsequent paragraph, they described other articles seized immediately from the person of Taylor, and, in still another paragraph, articles seized immediately from Hammond, including his automobile.

In a similar motion, Butler sought the suppression and return to him of the articles removed from his person and of his automobile.

The motions to suppress the evidence seized were denied, and the motions were introduced in evidence at the trial as tending to show that each movant had a proprietary interest in the articles the suppression and return of which he sought.

The defendants do not contest the propriety of the denial of their pretrial motion to suppress evidence.

In United States v. Calamaro, 354 U.S. 351, the Supreme Court held that the obligation to purchase the special occupational tax stamps did not apply to everyone engaged in the numbers or lottery business. Usually the bets are solicited and made initially by "writers," who turn the record of their bets and the money they have collected over to a "banker" who covers all of the bets received. At times "pick-up men" are employed to pick up money and the memoranda of the bets from the "writers" and take them to the "banker."

In considering this type of operation, the Supreme Court held in Calamaro that the pick-up man was not engaged in accepting wagers within the meaning of the re-

quirement that a special occupational stamp he purchased. The writers were so engaged, as was the banker.

Relying upon Calamaro, the defendants first say that the evidence was not sufficient to show that they were not pick-up men or mere clerical employees of an unidentified banker. The contention is without foundation, however. The agents had observed Hammond and Taylor over a considerable period of time, and the observations to which they testified would warrant the inference that Taylor and Hammond jointly were the bankers and not merely clerical employees of some unknown person who never appeared at the banking house. Butler was clearly aiding and abetting the bankers and the articles and paraphernalia removed from his person and the number slips bearing his initials were enough to support an inference that he was also a writer.

The District Judge, to whom the case was tried, expressed the opinion that the statements the defendants made in their pretrial motions to suppress showed their proprietary interest in the gambling paraphernalia, and their proprietary interest justified the finding that they were the bankers and not mere pick-up men or clerical employees. With that, we agree. The conclusion is abundantly supported by Merritt v. United States, 6 Cir., 249 F.2d 19, and United States v. Woodson, 6 Cir., 303 F.2d 49, which factually are quite similar to the present case.

Hammond and Taylor say, however, that in their motions they did not allege that the articles seized in the house, other than those from their immediate persons, belonged to them. In the paragraph in which those articles were listed, they did allege only that they were seized in a house of which they were the occupants, but, in the opening paragraph of the motion, they sought to suppress the use of those articles in evidence and their return to them

as "their property." Plainly, the motion does disclose that they claimed a proprietary interest in the articles.

The appellants contend, finally, that they ought to be relieved of their admissions in their motions because of the decision of the United States Supreme Court in Jones v. United States, 362 U. S. 257, which came down after their pretrial motions had been filed.

Jones had sought the suppression of a package of marihuana found in an awning outside the window of an apartment of which he was an occupant. Jones was charge with the possession of that marihuana, and proof of its possession was all that was required to convict him. The Supreme Court held that Jones was not required to allege in his motion to suppress that he was the possessor of the marihuana in order to have standing to move for its suppression. Theretofore a defendant, in such circumstances, had been faced with the dilemma of foregoing a motion to suppress or of formally admitting all elements of the crime of which he was charged, knowing that his admission could be used in evidence against him. Merritt v. United States, 6 Cir., 249 F.2d 19; Fowler v. United States, 10 Cir., 239 F.2d 93; Heller v. United States, 7 Cir., 57 F.2d 627; Vaught v. United States, 9 Cir., 7 F.2d 370; United States v. Lindsly, E.D. La., 7 F.2d 247.

The decision, of the United States Supreme Court in Jones v. United States, of course, establishes that these defendants would have had standing to move to suppress the evidence without admitting as much as they did, but it does not justify the conclusion that the admission of one who has admitted more than he need have is inadmissible in evidence against him. Admissions which are wholly unnecessary and wholly voluntary regularly are admitted in criminal cases against defendants; indeed, they are the only admissions which are admissible against them. The fact that at the time the defendants may have been under

the justifiable impression that they would be without standing to move to suppress unless they did admit ownership does not warrant the conclusion that the admission was involuntary. In all of the cases which uniformly have approved receipt in evidence of such admissions, the admissions have been made in similar efforts to establish standing to move to suppress.

The dilemma in which these defendants found themselves was not so obvious as that in which Jones found himself. Under the earlier rules governing standing, Jones could not move to suppress the evidence without a complete confession of guilt, while, if he failed to move to suppress, the evidence, itself, was enough to convict. Here, in contrast, the admissions were not confessions of guilt. Ownership of automobiles, adding machines and currency is not unlawful. As it eventuated, proof that the defendants had a proprietary interest in the seized articles tended to establish one element of the offense, but, unlike Jones, only one.

Under these rather dissimilar circumstances, we do not think we are required to so extend the holding in Jones as to now relieve these defendants from the consequences of their voluntary admissions.

Affirmed.

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729-073—64

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 868

GERALD TAYLOR AND CLIFTON A. HAMMOND, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 8–13) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 1964. On February 10, 1964, Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to and including February 25, 1964. The petition was filed on February 25, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a motion to return evidence was properly construed by the district court and the court of appeals as alleging a proprietary interest in numbers slips and gambling equipment.

STATEMENT

In the United States District Court for the District of Maryland, the two petitioners and two others were tried before the court under an information charging them in four counts with (1) violating 26 U.S.C. 7262 by operating a lottery without having paid the occupational tax imposed by 26 U.S.C. 4411; (2) violating 26 U.S.C. 7203 by wilfully failing to pay the occupational tax; (3) violating 26 U.S.C. 7272 by failing to register as required by 26 U.S.C. 4412(a); and (4) violating 26 U.S.C. 7203 by wilfully failing to supply information required by 26 U.S.C. 4412(c) (D.A. 1–3A).[1] The petitioners were convicted on all counts. Each was sentenced to concurrent terms of three months' imprisonment on the second and fourth counts, fined $1000 on the first count, and fined $50 on the third count. Payment of all but $500 of the fines was suspended (D.A. 34A). Codefendant John W. Butler was also convicted on all counts, and the remaining codefendant, Evelyn Freeman, was acquitted (D.A. 34–35A, Tr. 232).

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[1] "R." refers to the certified record, "D.A." to petitioners' appendix in the court of appeals, "G.A." to the government's appendix in the court of appeals, "Tr." to the transcript of the trial which we have lodged with the Clerk of the Court, and "E. Tr." to the transcript of the hearing of the motion to return evidence which we have also lodged with the Clerk.

The pertinent facts may be summarized as follows:

1. In July 1959 special agents of the Internal Revenue Service observed a house in Anne Arundel County, Maryland, for seven days. On each day petitioner Hammond, at times varying between 3:51 and 4:25 p.m., arrived at the house in an automobile with either Evelyn Freeman or an unidentified male (D.A. 11–18A, G.A. 6–10 app., Tr. 37–51). Hammond and his passenger would then enter the house carrying, on most occasions, a large brown paper bag. Immediately afterwards, an air-conditioning unit, located at a corner of the house where the window shades were drawn, would begin to operate. Shortly after petitioner Hammond's arrival, never more than forty minutes later, John W. Butler and petitioner Taylor would arrive in a second automobile and would enter with a second brown paper bag (D.A. 11–18A, G.A. 6–10 app., Tr. 37–51). The agents were unable to ascertain how long the four defendants remained in the house each day (the agents were hiding in a thicket infested with mosquitoes from a nearby swamp). However, one evening between 8:30 and 9:00 p.m. an agent drove by the house and observed that the two cars which had been there that afternoon were gone (Tr. 42–43, 137–138).

On the seventh day the agents returned with a search warrant (Tr. 50). About one hour after observing the four defendants enter the house, the agents and marshals knocked at the door and announced their presence (D.A. 18–19A, Tr. 196–197). After receiving no response, they broke into the house

and entered the room with the drawn window shades (D.A. 20–21A, Tr. 196–197). There they found petitioner Taylor and codefendant Butler standing behind a table, taking money out of envelopes on the table, and putting the money into their pockets (D.A. 21A). Petitioner Hammond and codefendant Freeman were also in the room (D.A. 20). The room contained four adding machines, number slips, and other gambling equipment (D.A. 21–31A). Petitioners' counsel conceded at the trial that the house "obviously [was] a counting house or a collecting station" (Tr. 212).[2] The agents searched each defendant and seized $86.16 from petitioner Hammond and $1008.88 from petitioner Taylor (D.A. 30A). Included in the money seized from Taylor was $822.88 found loose in his trouser pockets (G.A. 26 app.). The two petitioners, as well as defendant Butler, admitted to the agents

[2] The inner workings of a numbers operation was the subject of expert testimony at the trial. Bets are usually placed with "writers" who act as agents for those persons, called "bankers" or "backers", who run the operation. In the afternoon the money and numbers slips are collected from all the writers by "runners" or "pickup" men and taken to the headquarters of the operation, sometimes called a "bank" or "counting house". At the headquarters are clerical personnel who tabulate the winnings and losses for the day and make returns to the writers. On many occasions, the banker is also at the headquarters, and sometimes the banker meets the runners at an appointed place and he, himself, takes the money and slips to the headquarters (Tr. 64–91).

The federal wagering tax laws apply to bankers, writers, and other persons with a proprietary interest in the operation, but not to persons who are merely runners or clerical employees. *United States* v. *Calamaro*, 354 U.S. 351; *Ingram* v. *United States*, 360 U.S. 672.

that they were familiar with the provisions of the federal wagering tax laws (Tr. 151–152). None of the defendants had paid the occupational tax or complied with the registration and information requirements (Tr. 30–32).

2. On December 21, 1959, petitioners jointly filed a pre-trial motion in which they asked the court "to suppress the evidence herein seized, and return their property" (D.A. 4–5A). On March 28, 1960, this court decided *Jones* v. *United States,* 362 U.S. 257, holding that it was unnecessary for an accused to allege a proprietary interest in order to have standing to suppress evidence. The motion was heard on April 11, 1960, and later denied (E. Tr. 1–74).

3. At the trial, the court received into evidence petitioners' earlier motion to suppress and to return (Tr. 18–26). The trial court found that petitioner Taylor was more than a clerical employee and that he had a proprietary interest in the numbers operation, since in the motion to return evidence he had alleged ownership of money and gambling equipment which the evidence showed to belong to the enterprise (Tr. 232–233, 246–252, 255–256). As for petitioner Hammond, the trial court found that he had alleged a proprietary interest in the gambling equipment and that he was also guilty of aiding and abetting petitioner Taylor (Tr. 233–236, 246–252, 255–256). *Jones* v. *United States supra,* the trial court held, had no application to a motion which asks that evidence be returned (Tr. 246–252). The court of appeals affirmed the convictions, holding that both petitioners had

alleged a proprietary interest in the gambling equipment and that the *Jones* case was unapplicable (Pet. App. 8–13).

ARGUMENT

The only question presented by the petition (Pet. 2) is whether the district court and the court of appeals erred in construing the motion to return evidence as alleging a proprietary interest in the numbers slips and other gambling equipment seized by the agents during the raid (Pet. 2, 5–6). An examination of the motion shows that the introductory paragraph asked the district court "to suppress the evidence herein seized, and return *their* property" (emphasis supplied); that the first paragraph alleged petitioners were "occupants" of the premises and described the numbers slips and gambling equipment; and that the second and third paragraphs described the money and other articles seized from each petitioner's person (D.A. 4–5A). Thus the construction urged by petitioners—that the motion asserted only an interest in the personal articles, and not the numbers slips and gambling equipment—is untenable; for, as the trial judge observed, the language of the second and third paragraphs cannot be distinguished from the language of the first, and therefore the claim of ownership appearing in the introductory paragraph must be taken as referring to the numbers slips and gambling articles as well as to the money and personal property (Pet. 5, Tr. 246–248).

Moreover, it is clear from the extended remarks of the district judge at the trial that, in any event, peti-

tioners' guilt was based principally on petitioner Taylor's allegation of an interest in the money seized from his person, including the $822.88 found loose in his trouser pockets—money which, the trial judge found, had been taken from the envelopes on the table and had been the proceeds of the numbers operation (Tr. 232–233, 251–253, 255–256). Petitioner Taylor's claim to that money, together with the agent's observations of his activities both before and during the raid, showed that he had a proprietary interest[3] in the enterprise (Tr. 241, 252–253). As for petitioner Hammond, the trial judge indicated that he would be an aider and abetter if petitioner Taylor were found to have a proprietary interest (Tr. 233, 235–236). The evidence showed that he knew of the federal wagering tax laws and that he participated in concealing the numbers operation from law enforcement officers, which, under the decisions of this Court, is sufficient to convict him of aiding and abetting. *Ingram* v. *United States*,[4] 360 U.S. 672, 678–680; cf. *Bozza* v. *United States*, 330 U.S. 160, 164–165.

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[3] See note 2, *supra*.

[4] In *Ingram* v. *United States*, this Court said that a clerical employee of a gambling operation could be convicted of conspiring to violate the federal wagering tax laws if it were shown that he knew of these laws and that he participated in concealing the operation. 360 U.S. at 678–680. The same principle would apply to aiding and abetting. See generally, *Pinkerton* v. *United States*, 328 U.S. 640; *Model Penal Code*, Sec. 2.04(3), comment (Tent. Draft No. 1, 1953).

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1964.

U. S. GOVERNMENT PRINTING OFFICE: 1964